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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Streamlining the International)	
Section 214 Authorization Process)	IB Docket No. 95-118
and Tariff Requirements)	
)	
Public Notice - Rep. No. I-8183)	DA 96-988

To: The International Bureau

INFORMAL COMMENTS OF MFS INTERNATIONAL, INC.

MFS International, Inc. ("MFSI"), by its undersigned counsel, hereby respectfully submits its informal comments to the Commission's proposed list of countries and facilities that are not eligible for streamlined processing in an application for global Section 214 authority.¹ MFSI urges the Commission to reformat its "exclusion" list to identify only those countries and foreign-owned facilities that carriers may not use without specific FCC approval and refrain from publishing a list of "permitted" foreign-owned facilities that carriers may use on the basis that either there is no policy reason to "exclude" them or that they are foreign connecting facilities. The publication of an "excluded" and "permitted" list causes confusion and is inconsistent with the Commission's goals to eliminate unnecessary government regulation, increase competition, reduce paperwork obligations

¹ See Public Notice, Report No. I-8183, DA 96-988 (rel. June 20, 1996) ("Public Notice"); see also Streamlining the International Section 214 Authorization Process and Tariff Requirements, *Report and Order*, IB Docket No. 95-118, FCC 96-79 (rel. Mar. 13, 1996) ("Streamlining Order").

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and facilitate rapid market entry ²

To the extent that the Commission retains the “exclusion” list format that identifies specific non-U.S. licensed cable and satellite systems that U.S. carriers are *permitted* to use, the Commission should indicate that its list is illustrative only or otherwise place the Sea-Me-We 3, U.K.-Denmark 4, and U.K.-Netherlands 14 cable systems on this list. These cables either are in operation or soon will be. MFSI also requests that to the extent that the Commission continues to publish on its “exclusion” list those non-U.S. licensed systems that U.S. carriers are *permitted* to use, the Commission should allow U.S. carriers to negotiate and obtain access to those non-U.S. licensed facilities that are being considered under the Commission’s notice, comment and hearing process necessary to add those facilities to the list.

I. DISCUSSION

The Commission’s exclusion list identifies countries and facilities not covered by a grant of global Section 214 authority under new Section 63.18 (e)(1) of the Commission’s Rules.³ As it is currently formatted, the “exclusion” list identifies countries and facilities that are excluded *as well as* a list of non-U.S. licensed facilities that U.S. carriers are permitted to be used. Neither the Commission’s March 13, 1996 *Streamlining Order* nor its June 18, 1996 Public Notice (questions and answers) suggests that the Commission intended to exert regulatory jurisdiction over the use of foreign facilities that do not land in the U.S. and, evidently, raise no policy issues. Unfortunately, this is precisely the implication of the Commission’s publication of an “excluded” and “permitted”

² *Streamlining Order* at 2-3, ¶ 2.

³ *Streamlining Order* at 9-10, ¶ 9.

list. As such, that format undermines the Commission's overall effort to give U.S. carriers greater flexibility in the international services marketplace. Moreover, this format necessarily raises questions regarding the status of facilities that are neither on the "exclusion" list nor on the "permitted" list. Does the Commission intend by its "exclusion/permitted" list to prohibit the non-U.S. use of non-U.S. satellite systems (e.g., ASIASAT)?

Noticeably absent from this list of permitted facilities are the Sea-Me-We 3, U.K.-Denmark 4, and U.K.-Netherlands 14 cable systems. These non-U.S. licensed cable systems are in service or are about to be placed in service. If the Commission does not consider these facilities as "foreign connecting facilities" then the Commission should have included these systems on the "permitted" list. The FCC has offered no public interest reason for not listing these cable systems as covered by a "global" Section 214 authorization.

To the extent that these systems were not included on the list because they have not yet been placed in service, their exclusion raises concerns regarding a U.S. carrier's ability to negotiate for capacity on those systems. The Commission indicates that it will publish the exclusion list as part of each public notice listing granted streamlined Section 214 applications.⁴ To the extent that the exclusion list will be amended to include additional countries or facilities that U.S. carriers are permitted to use, the Commission states that it will issue a public notice providing parties with an opportunity for comment and hearing on the proposed changes.⁵ A carrier with global authority, therefore, must await a pleading cycle before negotiating for capacity on a newly-available

⁴ *Streamlining Order* at 10, ¶ 17.

⁵ *Id.* at 10, ¶ 18. *See Commencement of Streamlined Section 214 Procedures and Tariff Requirements*, Public Notice Report No. I-8181, DA 96-964 at 1-2 (rel. June 18, 1996).

submarine cable. MFSI requests that the Commission permit U.S. carriers with “global” authority to negotiate and obtain access to those non-U.S. licensed facilities which the Commission has not listed on its exclusion list as permitted.

Because the Commission has formatted its “exclusion” list in a manner that lists those non-U.S. licensed facilities that U.S. carriers are permitted to use, rather than only listing those facilities that U.S. carriers are *not* permitted to use, it creates delays and uncertainty for U.S. carriers that are attempting to negotiate and obtain access to those facilities while waiting for the Commission to complete its notice, comment and hearing process to add those facilities to the “exclusion” list. It is difficult from a business, financial and competitive standpoint for U.S. carriers to negotiate for access on these systems if they must wait for the Commission to complete this process before they can obtain capacity on these facilities. The delay and uncertainty caused by this process also places U.S. carriers in a tenuous negotiating position that may lead to inadequate capacity agreements for U.S. carriers. Moreover, given the high demand for submarine cable capacity, U.S. carriers may not be able to obtain the capacity necessary to provide service to their customers if foreign carriers obtain this capacity while U.S. carriers are waiting for the Commission to complete its exclusion list process. MFSI, therefore, requests that to the extent the Commission continues to publish on its “exclusion” list those non-U.S. licensed systems that U.S. carriers are permitted to use, the Commission should permit U.S. carriers to negotiate for capacity on those facilities prior to the completion of the Commission’s “exclusion” list amendment process.

The foregoing issue can be addressed and eliminated, however, if the Commission reformats its “exclusion” list so that it simply lists those non-U.S. licensed systems that U.S. carriers are not permitted to use. Under this approach, U.S. carriers can move forward in the negotiation process

under the assumption that they may use the non-U.S. licensed facilities unless and until the Commission specifically restricts their use. U.S. carriers will undertake and negotiate capacity on these systems at their own risk with the understanding that the Commission may not ultimately approve the use of that facility by U.S. carriers. To reduce this risk, MFSI proposes that the Commission include on its “exclusion” list a statement of criteria illustrating the types of cables that are excluded from “global” Section 214 authorizations.

Publishing only those non-U.S. licensed facilities that U.S. carriers are not permitted to use on the exclusion list will provide U.S. carriers with the ability to timely negotiate and obtain access to capacity on those systems. This approach is consistent with the Commission’s goals in this proceeding to facilitate entrance into the international telecommunications market, to expand the available international services, and to reduce or eliminate unnecessary regulations, thereby increasing competition in the marketplace.⁶

⁶ *Streamlining Order* at 2-3, ¶ 2.

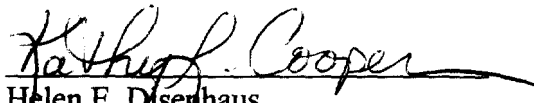
II. CONCLUSION

For the foregoing reasons, MFSI recommends that the Commission revise its "exclusion" list to simply identify those systems that U.S. carriers are not permitted to use so that U.S. carriers have the ability to properly negotiate for capacity on non-U.S. licensed systems. In the alternative, MFSI respectfully requests that the Commission include the Sea-Me-We 3, U.K.-Denmark 4, and U.K.-Netherlands 14 cable systems on the "exclusion" list to the extent that the list includes those systems that U.S. carriers are permitted to use. MFSI also requests that the Commission permit U.S. carriers to negotiate for capacity on a non-U.S. licensed facility prior to the Commission's completion of its process to amend its exclusion list to add that facility as a system that U.S. carriers are permitted to use.

Respectfully submitted,

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